

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, et al.,

Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**AMBAC ASSURANCE CORPORATION’S OBJECTION TO THE
URGENT MOTION FOR STAY OF ADVERSARY PROCEEDING SUPPLEMENTAL
TO PENDING MOTION TO STAY GO BOND PROCEEDINGS PENDING
CONFIRMATION OF COMMONWEALTH PLAN OF ADJUSTMENT**

Ambac Assurance Corporation (“Ambac”), by and through its attorneys, Ferraiuoli LLC and Milbank LLP, hereby submits this objection (the “Objection”) to the *Financial Oversight and Management Board for Puerto Rico’s Urgent Motion for Stay of Adversary Proceeding Supplemental to Pending Motion to Stay GO Bond Proceedings Pending Confirmation of Commonwealth Plan of Adjustment* (Dkt. No. 7882, the “Urgent Motion” or “Mot.”) in the above-captioned proceeding. In support of its Objection, Ambac respectfully submits as follows:

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the “Commonwealth”) (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747).

OBJECTION

1. On May 2, 2019, the Oversight Board,² acting through its Special Claims Committee, and the UCC filed an adversary proceeding against nineteen separate banks, underwriters, law firms and other professionals in connection with the Government Development Bank for Puerto Rico's ("GDB") failure to "be the steward of the Commonwealth's fiscal health," alleging "exploitation of GDB's misfeasance by the Defendants for their own profit and unjust enrichment." (19-00280-LTS, Dkt. No. 1 at 1, the "Underwriter Adversary.")

2. The complaint alleges that "GDB's misfeasance culminated with the issuance in 2014 of \$3.5 billion in principal amount of bonds . . . backed by the full faith, credit, and taxing power of the Commonwealth." (*Id.* at 3.) The complaint further contends that the defendants knew the Commonwealth was insolvent and would not be able to pay the 2014 GO Bonds but "nonetheless substantially assisted, and aided and abetted, GDB's breaches of fiduciary duty in connection with the 2014 GO Bond issuance in order to earn fees and make profits from the issuance at the expense of the Commonwealth." (*Id.* at 3-4.) The Oversight Board and UCC seek to recover underwriting fees, legal services fees, swap transaction fees, and alleged losses on account of "deepening insolvency" caused by alleged malfeasance relating to Puerto Rico's sale of various series of bonds dating back to 2008. (*Id.* at 90.)

3. On June 16, 2019, the Oversight Board announced it had entered into a plan support agreement ("PSA") with a small minority of holders of PBA and GO Bonds³ purportedly providing a framework for a to-be-proposed plan of adjustment for the Commonwealth. As Ambac has

² All capitalized terms not otherwise defined herein are as defined in the Urgent Motion.

³ The creditors that have signed onto the PSA largely consist of the LCDC and the QTCB Noteholder Groups, which collectively hold bonds totaling less than 10% of the Commonwealth's bond debt.

explained elsewhere,⁴ the plan envisioned by the PSA is patently unconfirmable because it would require the continued taking of monies belonging to Puerto Rico’s secured revenue bondholders; violate Section 407 of PROMESA and, thus, require the debtor to engage in illegal conduct; provide for recoveries inferior to what would be available under Commonwealth law, in violation of section 314(b) of PROMESA; effect impermissible vote-buying; and rely on inaccurate fiscal plan projections and estimates.

4. The PSA also purports to reflect an agreement to “settle” the 2012-2014 GO Bond Objection—a claim objection that has the potential to invalidate \$6 billion in GO Bonds—and thus obligates the Oversight Board to seek a stay of the 2012 -2014 GO Bond Objection. The Oversight Board did so (Dkt. No. 7640) and Ambac timely objected (Dkt. No. 7902, the “Ambac GO Stay Objection”).

5. Through the Urgent Motion, the Oversight Board now asks this Court to “supplement” the requested stay of the 2012-2014 GO Bond Objection to include the Underwriter Adversary, pending confirmation of a Commonwealth plan of adjustment. For all the reasons stated by Ambac in opposing the proposed stay of the 2012-2014 GO Bond Objection, the Urgent Motion for a “supplemental” stay should also be denied.

6. In fact, the proposed stay of the Underwriter Adversary is even more objectionable. In contrast to the 2012-2014 GO Bond Objection, the Oversight Board does not even *pretend* that a stay of the Underwriter Adversary is somehow essential to achieving the so-called “plan support” reflected in the PSA. If the parties to the PSA thought that were the case, they would have negotiated for such an outcome, as they did with the 2012-2014 GO Bond Objection.

⁴ See, e.g., *Ambac Assurance Corporation’s Motion to Strike Certain Provisions of the Plan Support Agreement By and Among the Financial Oversight and Management Board for Puerto Rico, Certain GO Holders, and Certain PBA Holders* (Dkt. No. 8020).

7. The Oversight Board’s apparent rationale for expanding the proposed stay is that the Underwriter Adversary has the potential to result in the “premature litigation of bond validity.” (Mot. ¶ 10.) But the only “premature” act here is the Oversight Board’s incongruous attempt to settle the “bond validity” question with a small group of creditors without having litigated the issue anywhere near to fruition, throwing in the towel on a legitimate—and in Ambac’s view highly persuasive—legal challenge that could have the effect of eliminating billions of dollars of purported obligations to GO Bondholders, freeing up those monies for other uses. Staying the Underwriter Adversary amounts to the same thing.

CONCLUSION

For the foregoing reasons, as well as those stated in the Ambac GO Stay Objection, Ambac respectfully requests that the Court deny the Urgent Motion.

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Dated: July 17, 2019
San Juan, Puerto Rico

FERRAIUOLI LLC

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CERTIFICATE OF SERVICE

I hereby certify that, on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notifications of such filing to all CM/ECF participants in this case.

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